

FEDERAL MARITIME COMMISSION

AUCTION BLOCK COMPANY AND
HARBOR LEASING, LLC

Complainants,

v.

THE CITY OF HOMER AND
PORT OF HOMER,

Respondents.

Docket No. 12-03

Served: December 18, 2013

BY THE COMMISSION: Mario CORDERO, *Chairman*,
Richard A. LIDINSKY, Jr., and William P. DOYLE,
Commissioners; Rebecca F. DYE, and Michael A. KHOURI,
Commissioners, dissenting.

Order Granting Request for Oral Argument

This proceeding is before the Commission for consideration of Complainants' Exceptions to the May 20, 2013, Initial Decision of the Administrative Law Judge (ALJ). Complainants have also requested that the Commission conduct an oral argument.

On April 2, 2012, Complainants, the Auction Block Company (Auction Block) and Harbor Leasing, LLC (Harbor Leasing) filed a complaint with the Commission against Respondents, The City of Homer (City) and the Port of Homer (Port), alleging violations of the Shipping Act of 1984 (Shipping Act), 46 U.S.C. § 40101 *et seq.* Complainants allege that the City and Port are Marine Terminal Operators (MTOs) that violated the Shipping Act through unreasonable prejudice or preference, refusal to deal, and unfair practices. 46 U.S.C. §§ 41106(2)-(3), 41102(c). Respondents argue that the Commission lacks subject matter jurisdiction, the complaint fails to state a claim for which relief can be granted, and reparations are barred by the statute of limitations.

On May 20, 2013, the ALJ issued an Initial Decision dismissing all of Complainants' claims against Respondents with prejudice, finding that the Commission lacks subject matter jurisdiction. On June 21, 2013, Complainants filed Exceptions to the ALJ's conclusions of law and certain findings of fact, and requested oral argument before the Commission on the Exceptions. On August 1, 2013, Respondents filed a reply to Exceptions, in which they opposed the request for oral argument. Respondents contend that oral argument would not enhance the Commission's understanding of the issues before it, and is unnecessary due to the extensive record and briefing during the proceeding.

CONCLUSION

We conclude that the Commission's decision in this proceeding would be assisted by oral argument.

Therefore, it is hereby **ORDERED** that Complainants' Request for Oral Argument is **GRANTED**. The argument will be limited to the following issue:

Whether the Port of Homer, which provides terminal services to common carriers at two docks within the Port, is an MTO under the Shipping Act of 1984, 46 U.S.C. § 40102(14), with regard to the leasing and tariff practices of the Port and its dockside cargo

handling facilities, which do not currently service common carriers.

Notice is given that the matter is scheduled for oral argument on February 27, 2014 at 10:00 a.m. Complainants will appear first. Complainants will be allotted a total of 30 minutes for argument, a portion of which may be reserved for rebuttal. Respondents will be allotted a total of 30 minutes for argument. The parties shall file with the Secretary, by February 3, 2014, the name of the person who will argue on their behalf. This filing shall conform with the service requirements of the Commission's Rules of Practice and Procedure, 46 C.F.R. Part 502, and shall be addressed and delivered to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, D.C. 20573, or via email at secretary@fmc.gov.

Complainants shall submit a brief not to exceed 30 pages on or before January 6, 2014. Respondent shall submit a Response brief not to exceed 30 pages on or before January 13, 2014. Complainants may thereafter submit a Reply brief, if any, not to exceed 15 pages on or before January 21, 2014.

Further notice is given that the deadline for issuance of the Commission's final decision in this proceeding has been extended from December 19, 2013, to July 28, 2014.

By the Commission.



Karen V. Gregory
Secretary